items, all of which except 1 to 7, inclusive, and 27 and 28, were abandoned. Items 1 to 7, inclusive, it seems, were for masonry, excavation, and concrete work done and stone quarried and delivered, while 27 and 28 were for profits claimed by Mrs. Dawson upon concrete and masonry work which she would have made had she been permitted to complete her contract. The claims in that bill of particulars illustrate what could be done and what could not be done under the law as it then stood. The case before us is plainly of like nature with the claims in that case for masonry, excavation, concrete work done and stone quarried, for which a recovery was permitted, while items 27 and 28 were for causes of action strictly "sounding in damages" for which a recovery was not allowed. As said in the opinion in the case cited: "The utmost that the plaintiff had a right to recover in this mode of proceeding is the amount of the first seven items of the account filed with the notice, and therefore the verdict and judgment, including damages for the breach of the contract, embraced in items 27 and 28 of the account, is, we think, clearly erroneous, and should be reversed and annulled."

Upon the whole case, we are of opinion that there is no error in the judgment before us which is affirmed.

Affirmed.

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## LAMBERT v. BARRETT.

June 12, 1913.

[78 S. E. 586.]

1. **Statutes (§ 158*)—Repeals by Implication.**—Repeals by implication are not favored by the courts, and the presumption is always against the intention to repeal when express terms are not used.

[Ed. Note.—For other cases, see Statute, Cent. Dig. § 228; Dec. Dig. § 158.*]

2. **Statutes (§ 159*)—Repeal—Presumption.**—To justify the presumption of intention to repeal one statute by another, the two statutes must be irreconcilable, and, if by a fair and reasonable construction they can be reconciled, both must stand.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. § 229; Dec. Dig. § 159.*]

3. **Municipal Corporations (§ 124*)—Council—Vacancy—Repeal of Statute—"Municipal Officers."**—Under Act Feb. 17, 1906 (Laws 1906, c. 24), authorizing the several cities and towns of the common-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

wealth to appoint officers and employees, and providing for the filling of vacancies in all municipal offices for the unexpired term, members of the city council are not municipal officers in view of other statutes and in view of their powers not being confined exclusively to local affairs, and hence such act does not repeal Code 1904, § 1015e, providing that when any vacancy shall occur in the council of a city the council shall elect a qualified person to fill the vacancy for the unexpired term, and vacancies of the common council are governed by the latter act and not the former.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. §§ 290-297; Dec. Dig. § 124.*

For other definitions, see Words and Phrases, vol. 5, pp. 4628, 4229; vol. 8, p. 7726.]

Error to Corporation Court of City of Alexandria.

Quo warranto proceedings by Urban S. Lambert against Robert S. Barrett. From a judgment for defendant, plaintiff brings error. Reversed.

*J. K. M. Norton,* of Alexandria, for plaintiff in error.
*C. E. Nicol,* of Alexandria, for defendant in error.

BUCHANAN, J. This is a quo warranto proceeding in which it was determined that the defendant in error, Robert S. Barrett, and not the plaintiff in error, Urban S. Lambert, was entitled to the office of member of the common council from the first ward of the city of Alexandria, made vacant by the death of Hubert Snowden, who was elected a member of the common council at the regular election held on the second Tuesday in June, 1910.

On the 23d day of April, 1912, the common council, acting under section 1015e of the Code of 1904, elected Mr. Lambert to fill the unexpired term of Mr. Snowden. At the general election in June following, Mr. Barrett was elected by the qualified voters of the city to fill the vacancy caused by the death of Mr. Snowden, in accordance with an act of assembly approved February 17, 1906. Acts of Assembly 1906, pp. 17, 18.

The contention of the defendant in error is, and the trial court so held, that section 1015e of the Code was repealed by the act of February 17, 1906, and that the vacancy was to be filled in the manner prescribed by the latter statute.

By section 1015e of the Code it is provided that: "When any vacancy shall occur in the council of a city having one branch, or in either branch of the council of any city having two branches, by death, resignation, removal from the ward, failure to qualify, or from any other cause, the council, or the branch, as the case

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

may be in which such vacancy occurs, shall elect a qualified person to supply the vacancy for the unexpired term."

The act of February 17, 1906, is as follows:

"An act to authorize the several cities and towns of this commonwealth to appoint officers and employees in addition to those expressly authorized in their respective charters and provide for the filling of vacancies in all municipal offices for the unexpired term.

"1. Be it enacted by the General Assembly of Virginia, that the council of every city or town of this commonwealth having in their several charters the power to appoint certain municipal officers shall, in addition to such power, have power to appoint such other officers and employees as the council may deem proper, or any committee of such council, or any municipal board, or the mayor of the city or town, or any head of a department of such city or town government, may also appoint such officers and employees as the council may determine, the duties and compensation of which officers and employees shall be fixed by the council of the city or town, except so far as the council may authorize such duties to be fixed by such committee or other appointing power, and may require of any of the officers and employees so appointed bonds, with sureties in proper penalties, payable to the city or town in its corporate name, with condition for the faithful performance of said duties. All officers so appointed may be removed from office at their pleasure by joint resolution of the two branches, and where the appointment is by a committee or board, by a vote of such committee or board, or where such appointment is by the mayor or head of a department, such removal may be by order of the mayor or head of department. In case of vacancies occurring in any municipal position so authorized to be filled, a qualified person may be appointed to fill such position for the unexpired term by the proper appointing power; and in case of vacancy in any municipal office which is elective by the people, if there be no general election during the unexpired term at which such vacancy can be legally filled, the city or town council may elect a qualified person to fill such vacancy until a qualified person can be elected by the people and shall have qualified for the next succeeding term, or when such general election does occur during the unexpired term at which such vacancy can be filled, such city or town council shall elect a qualified person to fill such vacancy until a qualified person is elected to fill such vacancy at such general election and shall have qualified."

The act of February 17, 1906, does not expressly repeal section 1015e of the Code. Does it do so by implication?

[1, 2] It is well settled that the repeal of a statute by implica-

tion is not favored by the courts. The presumption is always against the intention to repeal where express terms are not used. To justify the presumption of an intention to repeal one statute by another, the two statutes must be irreconcilable. If by a fair and reasonable construction they can be reconciled, both must stand. Fulkerson *v.* Bristol, 95 Va. 1, 5, 27 S. E. 815, and authorities cited.

If members of the city council of Alexandria are municipal officers within the meaning of the act of February 17, 1906, there can be no question that the provisions of that act and the provisions of section 1015e of the Code are in irreconcilable conflict, and that section of the Code must be regarded as repealed by the act of February 17, 1906. The question, therefore, to be determined is whether they are municipal officers within the meaning of the last named statute.

It is not easy, as was said in Burch *v.* Hardwicke, 30 Grat. (71 Va.) 24, 33, 34, 32 Am. Rep. 640, to define them (city officers or municipal officers) in all cases; but there are many such provided in the charters of many of the cities of the state. Among these are, perhaps, city engineers and surveyors, officers having superintendence and control of streets, parks, water works, gas works, hospitals, sewers, cemeteries, city inspectors and no doubt many others well known in large cities. Their duties and functions relate exclusively to the local affairs of the city and the city alone is interested in their conduct and administration. On the other hand, there are many officers, such as city judge, sergeant, clerk, commonwealth's attorney, treasurer, sheriff, high constable, and the like, some of whom are recognized by the Constitution while others are not. All these are generally mentioned as city officers, and they are even so designated in the Constitution, but they are not removable by the mayor. The reason is that while they are elected or appointed for the city, and while their jurisdiction is confined to the local limits, their duties and functions, in a measure, concern the state. They are state agencies or instrumentalities, operating to some extent through the medium of city charters in the preservation of the public peace and good government. However elected or appointed, however paid, they are as much state officers as constables, justices of the peace, and commonwealth's attorneys, whose jurisdiction is confined to particular counties. See, also, Mitchell *v.* Witt, Judge, 98 Va. 459, 36 S. E. 528; Smith *v.* Bryan, Mayor, 100 Va. 199, 40 S. E. 652; 1 Dillon, Mun. Corp. (5th Ed.) § 97; 1 McQuillan, Mun. Corp. § 178.

Tested by the rule laid down in the case of Burch *v.* Hardwicke, supra, it cannot be said that the duties and functions of a city council relate exclusively to the local affairs of the city. While

many, perhaps the great body, of the powers and duties of a city council relate exclusively to the local affairs of the city and to matters in which the city alone is interested, they exercise powers and perform duties in which the public at large, or the state, is interested directly. Under the provisions of section 1038 of the Code, city councils have the power to lay off, control, and keep in order streets, which become state highways and belong to the public or the state. White Oak Coal Co. *v.* Manchester, 109 Va. 749, 64 S. E. 944, 132 Am. St. Rep. 943. Their jurisdiction for certain purposes extends beyond the corporate limits. In criminal cases it extends one mile beyond the corporate limits. They have the right to erect waterworks outside of the city limits, and, in order to protect the water from pollution and the works from injury, their jurisdiction extends five miles beyond the works; and, for the purpose of carrying into effect these and other powers, they can enact ordinances and prescribe fines and other punishments for their violation. While these powers and others do not relate exclusively to the local affairs of the cities, they are in a certain sense municipal officers (Mitchell *v.* Witt, Judge, supra), and, if there were no other legislation on the subject, the broad language of the act of February 17, 1906, might be sufficient to include them. But, as there is other legislation on the subject, all the statutes in pari materia must be considered and harmonized if it can be done by any fair and reasonable construction. Mitchell *v.* Witt, Judge supra; Fulkerson *v.* Bristol, supra.

[3] If members of a city council be held to be municipal officers, within the meaning of the act of February 17, 1906, that act would be in irreconcilable conflict not only with section 1015e of the Code, but also with that portion of section 1015a of the Code which provides: "That all elections to all vacancies in any (city) council shall be for the unexpired term." If they are municipal officers, then under section 1033 of the Code the mayor would have the power to suspend and remove members of the city council, for that section provides that the mayor shall see that the various city officers and members of the police and fire departments, whether elected or appointed, faithfully perform their duties, and gives him the power to suspend such officers and to remove them for misconduct in office or neglect of duty.

Section 1015e provides that vacancies in either branch of the council shall be filled by the branch in which the vacancy exists, but if that section has been repealed by the act of February 17, 1906, a vacancy in either branch would have to be filled by the joint action of both branches of the council, for it is clear, we think, that every vacancy which the last-named act authorizes the city council to fill must be filled by the joint action of both branches of the council, where it consists of two branches.

If the members of a city council be municipal officers, within the meaning of the act of February 17, 1906, then it seems to us clear that the mayor is also a municipal officer, within its meaning. If this be so, then it will bring that act in irreconcilable conflict with section 1033 of the Code. That section provides that, upon the death, resignation, or removal of the mayor, his place shall be filled and his duties discharged by the president of the board of aldermen, or the president of the council, according as the city council has or has not two branches, until another mayor is elected and qualified. That section further provides that, within ten days after such death, resignation, or removal of the mayor, the corporation or hustings court shall order a special election to be held within 30 days after the order is entered to fill such vacancy, provided the unexpired term remaining after such election is as much as one year, while the act of February 17, 1906, provides that in case of a vacancy in any municipal office which is elected by the people, if there be no general election during the unexpired term at which such vacancy can be legally filled, the city council may elect a qualified person to fill such vacancy until a qualified person can be elected by the people, and shall have qualified for the next succeeding term, or, when such vacancy can be filled, such city council shall elect a qualified person to fill such vacancy until a qualified person is elected to fill such vacancy at such general election and shall have qualified.

If the members of a city council are held not to be municipal officers within the meaning of the act of February 17, 1906, as we think they may be, that act does not repeal section 1015e of the Code and the other statutes referred to. By such a construction the apparently conflicting laws can be harmonized and all stand.

We are of opinion, therefore, that the trial court erred in not so holding and in declaring that the plaintiff in error, Lambert, was not entitled to fill the vacancy made vacant by the death of Hubert Snowden until the end of the term for which the latter was elected. Its judgment must therefore be reversed, and this court will enter such judgment as it ought to have entered.

Reversed.

KEITH, P., absent.

**Note.**

In order to reconcile two apparently conflicting statutes it would seem that in this case our court has gone contrary to the weight of authority both in this state and in other jurisdictions.

While there are many decisions of the various courts determining who are and who are not city or municipal officers there are few covering the position of councilman, the majority treating of various sub-officers such as police, fireman, park commissioners, and boards and commissions of various kinds. In the few cases covering

directly the office of city councilman the courts have uniformly held them to be city or municipal officers and not state officers, and the inference to be drawn from other cases treating this subject would seem to follow the same theory.

The fullest treatment of the subject found in our decisions occurs in Burch *v.* Hardwicke, 71 Va. (30 Gratt.), 24, cited and approved in this case. There the court defines or classes as state officers the city judges, sergeants, clerks, commonwealth's attorneys, treasurers, sheriffs, high constables and the like as distinguished from purely city officers such as city engineers and surveyors, officers having superintendency and control of streets, parks, waterworks, gas works, hospitals, sewers, cemeteries, city inspectors. It is true that members of the city council are not mentioned in either of these classes of officers but in the later case of Mitchell *v.* Witt, 98 Va. 459, 36 S. E. 528, members of the city council are specifically separated and distinguished from that class of officers defined in Burch *v.* Hardwicke, supra, as state officers. In that case the question of the proper authority having jurisdiction to try and determine contest over the election of members of the common council, was at issue. Section 160 of the Code, provides that the returns of election of county, corporation, and district officers shall be subject to the inquiry, determination, and judgment of the court of the county or corporation wherein the election was held on complaint of an undue election or false return; and it was held that the corporation court has no jurisdiction to try and determine contests over the election of members of the common council of the city, but only such officers of the city as correspond to the officers of the respective counties and districts of the state. The court said: "It is obvious, therefore, that it was not the legislative intent to include within the provisions of section 160 members of the common council of a city, but only such officers of the city as corresponded to the officers of the respective counties and districts of the state, viz, sheriff, treasurer, clerks, attorney for the commonwealth, etc." Mitchell *v.* Witt, 98 Va. 459, 36 S. E. 528, 529.

This case seems clearly to class with the officers defined as city officers in Burch *v.* Hardwicke, members of the common council, or rather it specifically excludes them from the class named as state officers.

The general rule as stated in Burch *v.* Hardwicke, supra, seems to be generally adopted and followed, though its application to specific officers has resulted in conflicting opinions.

As stated in Britton *v.* Steber, 62 Mo. 370: "There is a recognized distinction between state officers, whose duties concern the state at large, or the general public, although exercised within defined territorial limits, and municipal officers, whose functions relate exclusively to the particular municipality. (Dill. Mun. Corp., § 33.) A state officer may be connected with some of the municipal functions, but he must derive his powers from a state statute and execute his powers in obedience to a state law. State *v.* Valle, 41 Mo. 29. Whilst it is true, that the state grants the charter under which a city is organized and acts, yet those elected in obedience to that charter perform strictly municipal functions, and do not act in obedience to state laws in the manner enjoined upon state officers."

And in People *v.* Curley, 5 Colo. 412: "It must be borne in mind that there is a legal distinction between state officers, that is, officers whose duties concern the state at large, or the general public, although exercised within defined limits, and municipal officers strictly,

whose functions relate exclusively to the particular municipality. 'The administration of justice, the preservation of the public peace and the like, although confined to local agencies, are essentially matters of public concern, while the enforcement of municipal by-laws proper, the establishment of gas works, of water works, the construction of sewers and the like, are matters which pertain to the municipality as distinguished from the state at large.' Dillon on Municipal Corporations, §§ 33, 34, 773." This case quotes with approval the classification given in Burch *v.* Hardwicke, supra, in deciding that a police judge was a state and not a municipal officer, where it is said:

"Upon the same point the Supreme Court of Virginia, in defining 'city officers,' classes among them city engineers and officers having control of streets, parks, water works, gas works, sewers, hospitals, cemeteries, health inspectors and the like, whose duties and functions relate exclusively to local affairs of the city, and in the conduct and administration of which the city is alone interested. On the other hand, it is said, 'there are many officers, such as city judge, sergeant, clerk, commonwealth's attorney, treasurer, sheriff, high constable and the like, some of whom are recognized in the constitution, while others are not. All these are generally mentioned as city officers, and are even so designated in the constitution, but no one has ever contended that either of them is in any way subject to the control and removal by the mayor. The reason is, that while they are elected or appointed for the city, and while their jurisdiction is confined to the local limits, their duties and functions in a measure concern the whole state. They are state agencies and instrumentalities operating to some extent through the medium of city charters in the preservation of public peace and good government. It thus appears to be clearly established that the administration of justice, the preservation of the public peace, and the protection of the rights of the citizen, although confided to local agencies, are essentially matters of public concern, while the enforcement of municipal by-laws and regulations as above illustrated, are matters which pertain to the municipal corporation merely, as distinguished from the state at large."

"The preservation of the peace has always been regarded, both in England and in America, as one of the most important prerogatives of the state. It is not the peace of the city or county, but the peace of the king or state that is violated by crimes and disorders. The prosecution is on behalf of the state. The trial is before tribunals created and regulated by the state. The remission of punishment is by the governor of the state. Our constitution confides the judicial power to no courts but those organized under the direct sanction and regulation of state law. No portion of this power can be delegated to cities. Courts may be established to act in municipalities, and their judges may be elected by the citizens, but their powers must all be defined by state legislation, which authorizes and establishes them. The members and qualifications of jurors are under state control." People *v.* Hurlbut, 24 Mich. 44, 83.

Our court has quoted these distinctions and classifications with approval, but reach the conclusion that city councilmen are nevertheless state officers, because of their more general duties and powers. The powers and duties of the council over the streets are given as one of their public or state duties, the streets being public highways for the benefit of the whole state. The decisions, however, mention superintendency and control of streets as a purely city func-

tion, officers having control of the streets being specifically classed as city officers in Burch *v.* Hardwicke, supra.

And in People *v.* Hurlbut, 24 Mich. 44, it is said by Judge Cooley: "For those classes of officers whose duties are general—such as the judges, the officers of militia, the superintendents of police, of quarantine, and of ports, by whatever name called—provision has to a greater or less extent, been made by state appointment. But these are more properly state than local officers; they perform duties for the state in localities, as collectors of internal revenue do for the general government; and a local authority for their appointment does not make them local officers when the nature of their duties is essentially general. In the case before us, the officers in question involve the custody, care, management and control of the pavements, sewers, waterworks and public buildings of the city, and the duties are purely local. The state at large may have an indirect interest in an intelligent, honest, upright and prompt discharge of them, but this is on commercial and neighborhood grounds rather than political, and is not much greater or more direct than if the state line excluded the city." People *v.* Hurlbut, 24 Mich. 44, 103.

And by Chief Justice Campbell in the same case: "It is agreed by historians that originally all boroughs acted in popular assembly, and that the select common council was an innovation, which may have been of convenience or by encroachment. In modern times cities have generally acted in ordinary matters by such a select body. But townships still act by vote at town meetings, and for many purposes connected with taxation the people of cities usually have the same privilege. But whether acting directly or by their representatives, the corporation is, in law, the community, and its acts are their acts, and its officers their officers." People *v.* Hurlbut, 24 Mich. 44, 88.

The few cases directly involving the office of city councilman are uniform in holding them to be city officers.

"The office of councilman is an office purely and wholly municipal in its character. He has no duties to perform under the general laws of the state. The state has enacted a law applicable to all cities which may organize under it. The inhabitants of the particular locality, after having taken the other necessary steps for an organization, elect the designated number of councilmen, who have the power to enact by-laws, and do such other acts and perform such other duties as pertain to their office in the municipality. These powers and duties of councilmen are beyond and in addition to any acts, powers, and duties performed by officers provided for under the state government. In the opinion of Hanna, J., in Waldo *v.* Wallace, 12 Ind. 569, the question being whether the office of mayor was an office within the section of the constitution in question, it is said: 'After much consideration, we are of opinion that the executive and administrative duties of Wallace were not such as come within those departments of the state government, as established by the constitution, and that he was, consequently, left free to be charged with official duties under either of the other departments.' If the executive and administrative duties of the mayor of a city are not such as come within the departments of the state government, as established by the constitution, it must follow that the duties of a councilman do not." Platt *v.* Kirk, 44 Ind. 401, 407.

In Concordia *v.* Hagaman, 1 Kan. App. 35, 41 Pac. 133, the legality of a contract made between Hagaman as a member of a publishing house and the city council of which Hagaman was a

member was involved. Under Gen. Stats. 1889, § 2466, all state and county officers are prohibited from taking any contract or having performed or done for their own profit, any work in and about the office held by them. The question arose as to whether a member of a city council was prohibited from contracting with the city under this statute, the court said: "By no reasonable construction can a city councilman be held to be either a state or county officer," and declared the contract to be valid.

In Rowell *v.* Horton, 58 Vt. 1, the question arose in deciding the legality of the tax list for the town of Chittenden. It was contended that this list was illegal because the listers did not, before entering upon their official duties in taking and making up the list, take and subscribe to the oath of office as required by the constitution. The constitutional provision relied upon required every officer whether judicial, executive or military, in authority under the state before entering on the discharge of his duties to take the oath prescribed therein. It was held that this provision of the constitution applied only to state officers and the question arose as to whether a lister was a state or municipal officer. In deciding this question the court said: "It is true that listers act under a general law of the state defining their powers and duties, which is designed to secure uniformity of taxation throughout the state and to equalize, so far as possible, the burden that must be borne to sustain the existence of our political organization. But notwithstanding the object so sought is statewide, and the result to be obtained so desirable, it does not make the listers state officers; they are, nevertheless, town officers, answerable for their official work only to the towns and the tax-payers whose list they make up. They are no more state officers or officers in authority under this state than selectmen and other minor town officers who are either elected by the legal voters in town meeting or appointed by superior town officers, and whose powers and duties are defined by general laws of the state. Town officers' immediate source of authority to act is not the votes of the freemen of the state at large nor a commission issued by the governor, but their election by the voters of the towns or their appointment by the superior officers of the towns to which their jurisdiction is limited; and they are in authority solely by virtue of their said election or appointment." It was evident from this opinion that the court did not consider a selectman (who corresponds to a member of our city councils) a state officer; and in Lemington *v.* Blodgett, 37 Vt. 210, the court decided directly that the selectman was not a state officer and was not required to take the oath prescribed in the constitution for state officers before entering upon the execution of their office.

"An alderman or justice of the peace is not properly a ward, borough or township officer, nor is the office a judicial office, strictly speaking, although the constitutional provisions on the subject are found in the article on the judiciary. We must, however, consider it as belonging to the class of ward, borough or township offices, because it is placed in that class by the constitution. And it is the only office of that class where, under existing laws, the governor has power to appoint, in case of vacancy." Attorney General *v.* Callen, 101 Pa. 375, 379.

There are numerous cases fixing the status of members of boards of public works as city officers, and in some the analogy between such boards and the council of the city is clearly indicated.

In Sherwood *v.* State Board, 129 N. Y. 360, 29 N. E. 345, mem-

bers of a board of park commissioners were held to be city or municipal officers. Besides selecting and purchasing lands for a city park, by condemnation proceedings, if necessary, they were authorized and clothed with the exclusive power to govern, manage, direct, lay out, and regulate the park, to appoint engineers, clerks, police, and other necessary officers, and prescribe their duties and fix their compensations, and generally in regard to the park they were clothed with all the power and authority possessed by the common council of the city. They were also clothed with power to pass such ordinances as they may deem necessary for the government of the park, not inconsistent with the ordinances of the city, which ordinances are required to be published in the official paper of the city; and all persons offending against such ordinances might be punished before any magistrate of the city by fine or imprisonment.

Earle, J., in delivering the opinion in this case, said: "It seems to me too clear for dispute, in view of these provisions, that the park commissioners are officers under the city government. They hold their offices by appointment of the city government, and therefore under the city government. All their duties relate to its interest and welfare, and they are actually set in motion by a vote of the tax-payers of the city. They are certainly not state officers, and, if they are not city officers, what are they? It is no answer to these views that the powers and duties of these commissioners are regulated by law, and thus that they do not act under the direction or control of the city government or of any of its officers, and that, therefore, they are, in a certain sense, independent officers. This is generally true of all public officers, from the mayor of a city to the supervisor of a town, through all the grades to a town constable. Their powers and duties are regulated by law. The route in which they shall travel is prescribed by law, and, unless they are specially subjected to the control of a superior officer, they act independently, subject to no control except the rules of law and the commands and judgments of the courts. And nevertheless the mayor of a city is a city officer, and the supervisor and constable of a town are town officers."

This analogy between city councils and public boards is even more clearly brought out in People *v.* Hurlbut, 24 Mich. 44, where it is said: "But the common council of the city is not the city, nor the legal entity known as the corporation of the city. It is, itself, but a public board for municipal governmental purposes, with just such powers (not forbidden by the constitution) as the legislature have thought, or may hereafter think, proper to confer. Yet no one doubts that the legislature might confer upon it all the powers mentioned in the section of the constitution above cited, and the counsel for the respondents seems to claim that it is proper to confer such powers, in cities, only upon the common council. But as there is nothing in the constitution requiring cities to be governed by a common council, or that any board by that name, or with the same powers, should exist; and the proper organization of such municipal government is left to the discretion of the legislature, with the limitation already indicated, I can see no reason to doubt their power to abolish it, and to substitute any other board or municipal agency in its place, not inconsistent with the constitution. And I can discover no reason why the powers heretofore exercised, co-extensive with the city limits, by the common council, may not be parceled out to several different public boards, giving to one

the supervision and control of one class of subjects pertaining to the public interest, and to another, another class. Each board would clearly constitute a part of the city government for public and municipal purposes; and I think the several 'local, legislative, and administrative powers' mentioned in this section, properly pertaining to the several classes of subjects committed to the several boards, may be just as properly conferred upon the appropriate boards respectively, as upon the common council; and that it is just as clearly conferring such powers upon the corporation, within the meaning of the constitution."

M. B.

## DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

### Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

ADAMS et al. *v.* BOOKER.

March 13, 1913.

[77 S. E. 611.]

**1. Appeal and Error (§ 343*)—Perfecting Appeal—Computation of Time.**—The time between the presentation of a petition for appeal and the date of the order granting the appeal must be excluded from the one year given appellant, under Code 1904, § 3474, after final decree, within which to perfect an appeal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1889-1904; Dec. Dig. § 343.* 1 Va.-W. Va. Enc. Dig. 499; 14 Va.-W. Va. Enc. Dig. 79.]

**2. Appeal and Error (§ 338*)—Perfecting Appeal—Dismissal of Bill of Review.**—Under Code 1904, § 3474, requiring an appeal to be perfected within one year after the date of a final decree, or within six months after dismissal of a bill of review, the appellants did not have one year, but had only six months, after dismissal of their bill of review, within which to perfect an appeal, though the decree of dismissal was entered less than six months after the final decree.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1879-1882, 3057; Dec. Dig. § 338.* 1 Va.-W. Va. Enc. Dig. 497; 14 Va.-W. Va. Enc. Dig. 79.]

Appeal from Circuit Court, Amelia County.

Action between Adams and others and Booker. From the judgment, Adams and others appeal. Appeal dismissed.

*W. Moncure Gravatt,* of Blackstone, for appellants.

*Thos. R. Hardaway,* of Amelia, for appellee.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.